

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN THE MATTER OF THE : ORPHANS' COURT
 :
ESTATE OF CARL H. WRIGHT, : No. 41-97-0130

OPINION

Issued Pursuant to R.A.P. 1925(a)

AND NOW, this _____ day of January, 2004, the court has reviewed the Concise Statement of Matters Complained of on Appeal and issues the following Opinion to supplement the court's Opinion and Order issued on November 10, 2003.¹

1. Whether the Executor and Attorney for an Estate Have the Burden of proving their Entitlement to Fees for the Administration of the Estate

This issue was not in dispute. The Executor, the Objector, and the Auditor all agreed that the Executor and the attorney for the Estate have the burden of proving their entitlement to fees.

2. Whether the Executor and Attorney in this Case Failed to Prove that their Fees Were Reasonable

The court has reviewed the record, as well as the Auditor's discussion of the fees. The court was impressed with the Auditor's discussion of the law, as well as the application of the facts of this case to the law. Although no hourly records were kept by the attorney, the court agrees with the Auditor that the \$8000 attorney fee is fair and reasonable. Basing the fees upon a fee schedule does not automatically render the fees unreasonable. The Auditor conducted an inquiry into the reasonableness of the

¹ It is noted that the November 10, 2003 order was issued by Judge Clinton W. Smith, who has since retired.

compensation, and the inquiry centered around the relevant criteria. See In Re Estate of Bruner, 691 A.2d 530 (1997). The Auditor fully and adequately explained his findings in this regard, and the court agrees with those findings. The court also agrees with the Auditor's conclusion that the \$8000 Executor fee was not fair and reasonable, and that it should be reduced to \$5000.

3. Whether the Executor of this Estate Breached his Fiduciary Duty to Administer the Estate with Competence

The Auditor found that several mistakes were made, namely the improper payment of the 1% tax on the decedent's joint checking account with David Wright, the payment of \$68.53 Ocean City waste water charges, the failure to pay the federal income tax due as a result of the decedent cashing in a life insurance policy, the failure to pay the taxes in a timely fashion when billed, and the undue delay in distributing the AT&T stock to Objector. As to the College Avenue lot, the Auditor found that there was a bonafide disagreement, favorably resolved, rather than self-dealing by the Executor. The Auditor did not find that any of these mistakes were the result of bad faith administration of the estate or self-dealing, and the record supports that conclusion. The Auditor concluded that the Objector would be made whole by ordering the Executor to pay to the estate all funds lost due to the mistakes. In addition, the Auditor concluded that the Executor's fee should be reduced by \$3,000. In the court's opinion, this is a just remedy for the Executor's failures.

4. Whether the Court has a Substantial Degree of Discretion to Compensate the Objector to an Accounting at the Expense of the Executor and his Counsel.

Neither the Executor nor the Auditor disputed the fact that although an objector will ordinarily be required to pay his or her own counsel fees and other litigation expenses, the court does have the authority to order an objector's counsel fees and other expenses to be paid out of estate funds in exceptional cases.

5. Whether the Fees and Expenses Incurred by the Objector in this Case Should be Paid by the Estate

As to the allocation of costs, the court sees no problem with the Auditor's conclusion that the Objector must pay his own attorney fees and half the Auditor's fees and costs. The majority of the objections were found to be without merit, and the amount of money recovered due to the litigation was not very significant in light of the value of the overall estate.

6. Whether the Objector's Rights to Due Process were Violated by the Findings of the Auditor.

It is true the Auditor stated the Estate's attorney was skilled and enjoyed a good reputation, and that the fees were consistent with the rate or professional compensation usual at the time and place. It is also true that scant evidence was introduced on these issues. However, the Objector was free to cross-examine the witnesses on these matters, or to introduce his own evidence. Moreover, a close look at the Auditor's report shows that the Auditor conducted a comprehensive inquiry into the work performed by the Executor and the Estate's attorney, and that the Auditor was fair and impartial. After a review of the record, this court is convinced that the Objector's due process rights were not violated. He had a full and fair opportunity to voice his concerns. A few of those concerns turned out to be valid. Most of them did not.

BY THE COURT,

Richard A. Gray, J.

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